

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Civil Writ Petition No. 3341 of 2001 (M/S) **Decided on: 14th Feb., 2006**

(Old No. 22079 of 1998)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 14.02.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved Judgment

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

**Civil Writ Petition No. 3341 of 2001 (M/S)
(Old No. 22079 of 1998)**

Mangat Ram and others

..... Petitioners

Versus

1. District Judge, District Pauri Garhwal.
2. Prescribed Authority / Civil Judge (Jr. Div.)
Kotdwar, District Pauri Garhwal.
3. Ram Avtar S/o Bhagwan Das
R/o Station Road, Post Kotdwar,
District Pauri Garhwal.

..... Respondents

Mr. Rajendra Dobhal, Advocate for the petitioners.
Mr. Manoj Tiwari, Advocate for respondent No. 3.

Hon'ble Prafulla C. Pant, J.

By means for this writ petition, moved under Article 226 of the Constitution of India, the petitioners (tenants) have challenged the judgment and orders dated 04.07.1998 (Annexure 1) passed by District Judge, Pauri Garhwal and judgment and order dated 12.04.1996 (Annexure 2) passed by the Prescribed Authority / Civil Judge (Jr. Division), Kotdwar, District Pauri Garhwal, whereby the shop in question has been released in favour of the landlord-respondent No.3.

2) Brief facts of the case, as narrated in the writ petition, are that respondent No. 3 is landlord of the shop in question, who moved an application under Section 21 (1)(a) the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, for release of the shop situated at Station Road, Kotdwar. The landlord sought release of the shop with the allegations that he needs the shop which is in the tenancy of the petitioners on the ground that his married son has to run his business there. The petitioners (tenants) contested the application before authorities below challenging the bonafide need of the landlord. It was also pleaded by the tenants that there is no alternative accommodation available for them where they can shift their business. It was further pleaded that earlier also a Small Cause Court suit was also instituted for eviction of the petitioners on the ground of sub letting and material alterations, but the same was dismissed by the Small Cause Court, and, revision against it was also dismissed. After taking evidence of the parties and hearing them, the Prescribed Authority passed the order dated 12.04.1996 releasing the shop in question in favour of the landlord. Aggrieved by said order, the petitioners filed an appeal under Section 22 of the aforesaid Act before the District Judge, Pauri Garhwal, which was also dismissed vide order dated 04.07.1998. Hence, this writ petition.

3) In the counter affidavit before this Court, respondent No. 3 (landlord) has admitted that earlier S.C.C. Suit No. 04 of 1975 was filed by him. In this connection, it is stated in the affidavit that the petitioners pleaded in that case that shop in question could not have been partitioned or materially altered estoppes him from taking the plea that the shop can be partitioned and the need of the landlord can

be satisfied by partitioned portion of the shop in question. In the counter affidavit, it is further stated that both the courts below, have given concurrent findings of fact as to the bonafide need of the landlord and greater comparative hardship in favour of landlord. It is further alleged that during the pendency of proceedings the tenant has got another shop in the vicinity of the shop in question but they have not shifted their business in said shop.

4) I heard learned counsel for the parties and perused the record.

5) Before further discussion, it is pertinent to mention here, that impugned order passed by respondent No. 1 shows that the petitioners have suggested before lower appellate court that the shop in question can be divided and the landlord's son can start his business in half portion of the shop in question. However, it appears that the lower appellate court did not give any categorical finding if it is possible and if it satisfies the need of the landlord.

6) The order dated 12.04.2002, passed by this Court, further indicates that the petitioners before this Court also offered to handover half portion of the shop in question. The said order of this Court is being reproduced below:

“Learned counsel for the petitioners made statement at Bar that petitioners shall handover possession to the respondent / landlord, which they have offered voluntarily to the respondent / landlord in the trial court, within a week from today.

The learned counsel for the respondent / landlord also accepted the said proposal. After

the accommodation is handed over to the respondent / landlord, the only question will be left to be seen as to whether accommodation handed over to the respondent / landlord caters the bonafide need or not?

Put up on 23.04.2002.

Certified copy of this order be issued today to the parties on payment of necessary charges.

Sd/-

P.C.V., J.”

Learned counsel for the parties admitted before this Court, that half portion of the shop as undertaken by the petitioners, have been handed over to the respondent No. 3 and his son has started his business in half portion of the shop. As such, the only question remains to be seen by this Court, is whether that satisfied the need of the landlord or not? In the supplementary affidavit before this Court, the petitioners have stated that half portion of the shop handed over to the respondent No. 3, is insufficient for running the businesses by his son. However, learned counsel for the petitioners argued that both, the petitioners and son of respondent No. 3, are running their business in the portions in their occupation, without any problem.

7) Learned counsel for the petitioners drew attention of this Court to Rule 16(1)(d) of rules framed under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, which reads as under:

“Where the tenant’s need would be adequately met by leaving with him a part of the building under tenancy and the landlord’s needs would be served by releasing the other part, the prescribed

authority shall release only the latter part of the building.”

However, learned counsel for the respondent No. 3, in reply, contended that said provision pertains to the buildings occupied for the residential purposes. After going through the provision, this Court is of the opinion that, no doubt, the aforesaid rule does contain guideline for consideration of the requirement of personal occupation for the purposes of residence by the landlord or any member of his family, but this does not mean that in respect of the shop, if the part of the shop satisfies the need of the landlord, the court cannot allow the release application, partly. This view gets support from the principle of law laid down in ***Ramesh Chandra Kesharwani Vs. Dwarika Prasad reported in 2002 (2) Allahabad Rent Cases Pg. 298***, in which the Apex court has held that even in the cases of shops, the prescribed authority or the appellate authority or the High Court (in exercise of the power under Article 226 of the Constitution of India) can, order partial eviction of the tenants to do justice between the parties. Same view was earlier expressed by Allahabad High Court in ***Rama Shankar Rastogi Vs. Smt. Rewati Devi reported in 1994 (1) Allahabad Rent Cases Pg. 225***. In view of the above position of law, this Court finds no substance in the objection of the learned counsel for respondent No. 3 that Rule 16(1)(d), since applies only to buildings occupied for residence, as such, order to release a shop partially cannot be ordered. In the present case, there is already a partition and landlord has already taken possession of the partitioned portion of the shop and his son is running his business in it. Therefore, this Court has no reason to not to accept the contention of the learned counsel for the petitioners that the lower appellate authority should have passed the order for

partial release of the partitioned shop. The lower appellate court (respondent No. 1) has erred in law by not replying the suggestion made by the counsel of the tenant – appellants before that authority.

8) Mr. Manoj Tiwari, learned counsel for respondent No. 3 drew attention of this Court to principle of law contained in ***Ouseph Mathai Vs. M. Abdul Kadir reported in (2002) 1 S.C.C. pg. 319***, and argued that scope of jurisdiction of Article 226 read with 227 of the Constitution of India is limited to the extent of grave dereliction of duty or flagrant abuse of power on the part of the lower court, which has resulted in grave injustice to any party. He further contended that it is not the case here, as such, this Court cannot interfere with the concurrent finding of fact arrived at by the prescribed authority and the lower appellate court. As far as principle of law is concerned, this Court is in full agreement with the learned counsel for respondent No. 3, but this Court is unable to accept the contention of the learned counsel to the extent that the impugned order of the lower court does not suffer from any error of law. Not only the lower appellate court has failed to give any finding on the question, whether the need of the landlord gets satisfied with the partitioned shop or not, but also, that this Court cannot close its eyes to the acceptance of proposal by the respondent No. 3 before this Court on 12.04.2002, as mentioned above. In the circumstances, the writ petition deserves to be allowed, partly.

9) Accordingly, the writ petition is partly allowed to the extent that the impugned orders passed by respondent No. 1 and 2 are set aside, in respect of the partitioned portion of the shop which is in occupation of the petitioners after it has

handed over possession of half of the shop to the landlord-respondent No. 3, in pursuance of the undertaking given to this Court on 12.04.2002. The impugned orders as to release of the shop, are upheld in respect of the portion, occupation of which has been handed over to respondent No.3, as mentioned above. No order as to costs.

(Prafulla C. Pant, J.)

Dt. February 14, 2006.

H. Negi